IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7357 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANU @ GHELO @ KANTI DEVJI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MS SNEHA P VAIDYA for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/03/2000

ORAL JUDGEMENT

#. The petitioner is a detenue who came to be detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad city, Ahmedabad, passed on 9th July, 1999, in

exercise of powers under Section 3 (2) of the PASA Act.

#. The present petition is recorded on the basis of an application received from the detenue through jail. Ms. Snehaben Vaidhya, learned advocate has been appointed as advocate for rendering legal aid.

#. On perusal of the papers, it appears that the detaining authority took into consideration five offences registered against the petitioner with Kagdapith Police Station for offences punishable under the Bombay Prohibition Act. The detaining authority has taken into consideration statements of two anonymous witnesses in respect of incidents occurred on June 22, 1999 and June 22, 1999 and identity of those anonymous witnesses has not been disclosed in exercise of powers under Section 9(2) of the PASA Act. The detaining authority came to conclusion that the petitioner is a bootlegger as defined under the PASA Act. He is required to be immediately prevented from pursuing his illegal and anti-social activities. The petitioner was in custody, but had applied for bail and the Court was pleased to grant bail to the petitioner. The authority, therefore, felt that the petitioner would resume his illegal and anti-social activities, and he is, therefore, required to be immediately prevented from pursuing such activities detrimental to public order.

#. It appears that the statements of two anonymous witnesses have been recorded on July 7, 1999 and 8th July, 1999. The said statements have been verified by the detaining authority on 9th July, 1999. The detaining authority has come to conclusion that incidents narrated by the witnesses are correct and that the fear expressed by them qua the petitioner is genuine and their identity is required to be given the shelter of anonymity and the detaining authority, therefore, exercised powers under Section 9(2) of the PASA Act.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. In the instant case, the detaining authority has verified the statements of anonymous witnesses on 9th July, 1999 and the order of detention was passed on the very same day. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such

short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore stands vitiated in the instant case as well and the petition deserves to be allowed on this count alone.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated 9th July, 1999 passed against the detenue Kanu @ Ghelo @ Kanti Devjibhai Parmar, is hereby quashed. The detenue is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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